Mapa Conceitual dos 2001 ILC Draft Articles on State Responsibility

ELEMENTS OF AN INTERNATIONALLY WRONGFUL ACT OF A STATE

Action or Omission attributable to the State unter int. law

Actions or Omission constitutes a breach of int. obligation

ATTRIBUTION OF A CONDUCT TO A STATE

Organs of a State
(legislative, executive, judicial or any other functions, position in the organization of the State & includes any person or entity with status in internal law (even if it exceeds its authority or contravenes instructions – art. 7; also when acting on the instructions of, or under the direction or control of, that State in carrying out the conduct – art. 8; when exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority – art. 9)).

Persons or Entities exercising elements of governmental authority
(when working in the capacities given to them by the State)

Organs placed at the disposal of a State by another State
(when acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed).

Insurrectional or other movement
(which becomes the new Government of a State, conduct attributable to this new State)
+
(Conduct of a movement, insurrectional or other, succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration – considered an act of the new State).

Conduct acknowledged and adopted by a State as its own

BREACH OF AN INTERNATIONAL OBLIGATION

Breach of na obligation when: (i) State is not in conformity with obligation & (ii) State is bound to that obligation.

Breach might be: (i) momentaneous with extended effects; (ii) continuous.
Breach might be: (i) singular; (ii) composed – art. 15.

SERIOUS BREACHES OF OBLIGATIONS UNDER PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW

Particular consequences
(complementing general consequences).

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.
2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.

INVOCATION OF THE RESPONSIBILITY OF A STATE

by an injured State
(if the obligation breached is owed to:
(a) that State individually; or
(b) a group of States including that State, or the international community as a whole, and the breach of the obligation:
(i) specially affects that State; or
(ii) is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation

Through a ***Notice of claim,*** that may contain the indication of the wrongful act and what form of reparation the injured State recommends.

Claim is inadmissible if the claim is one to which the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted.

Where several States are injured by the same internationally wrongful act, each injured State may separately invoke the responsibility of the State which has committed the internationally wrongful act

Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.

Loss of the right to invoke responsibility
The responsibility of a State may not be invoked if:
(a) the injured State has validly waived the claim;
(b) the injured State is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

by a State other than an injured State

If (a) the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or
(b) the obligation breached is owed to the international community as a whole.

Any State entitled to invoke responsibility may claim from the responsible State:
(a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with; and
(b) performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.

RESPONSIBILITY OF A STATE IN CONNECTION WITH THE ACT OF ANOTHER STATE

Aid or assistance in the commission of an internationally wrongful act , attributable to the ***aiding State if***

Direction and control exercised over the commission of an internationally wrongful act

Coercion *(State uses coercion to make another State commit wrongful act)*
State that coerces is responsible if:

(i) *State has knowledge of the circumstances of wrongfulness;*
(ii) the act would be internationally wrongful if committed by the other State

(ii)...even without the coercion.

CIRCUMSTANCES PRECLUDING WRONGFULNESS

Consent
(if a State A gives consent to another State B for the comission of na act, State B is not responsible for the wrongfulness of that act, while in the limits of that consent).

Self-defense
(no responsibility when the act constitutes self-defense in accordance with UN Charter).

Countermeasures
(wrongfulness precluded if and to the extent that the act constitutes a countermeasure in accordance with the provisions of the ILC Draft Articles chapter II, part three).

Force Majeure
(precludes wrongfulness when it is na irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation).

Does not apply if – art. 23.2:
(a) the situation of force majeure is consequence, either alone or in combination with other factors, of the conduct of the State invoking it; or
(b) the State has assumed the risk of that situation occurring.

Distress
(wrongfulness precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care).

Does not apply if – art. 24.2:
(a) the situation of distress is due, either alone or in combination with other factors, to the conduct of the State invoking it; or
(b) the act in question is likely to create a comparable or greater **peril (= harm).**

Necessity
(does not preclude wrongfulness)

Unless:
(a) is the only way for the State to safeguard an essential interest against a grave and imminent peril; and
(b) does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole.

May not be invoked in any case to justify wrongfulness being precluded if:
(a) the international obligation in question excludes the possibility of invoking necessity; or
(b) the State has contributed to the situation of necessity.

Nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law.

The invocation of a circumstance precluding wrongfulness in accordance with this chapter is without prejudice to:
(a) compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;
(b) the question of compensation for any material loss caused by the act in question.

CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF A STATE

Legal consequences of an internationally wrongful act

Continued duty of performance
(the legal consequences of an internationally wrongful act **do not affect the continued duty of the responsible State to perform the obligation breached.**

Cessation and non-repetition
(responsible State is obliged to (a) to cease that act, if it is continuing; (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Reparation
(the responsible State is under an obligation to make full reparation for the injury, which includes any damage, whether material or moral, caused by the internationally wrongful act).

Irrelevance of internal law! (the responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations).

REPARATION FOR INJURY

Restitution
(to re-establish the situation which existed before the wrongful act was committed), considering that:
(a) is not materially *impossible;*
(b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

and (dependingo on whether the damage was made good by restitution or not)

Compensation
(shall cover any financially assessable damage including loss of profits insofar as it is established).

and (dependingo on whether the injury was made good by restitution and compensation or not

Interest
(="juros da mora")

Satisfaction
(may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality. It shall not, however, be out of proportion to the injury and may not take a form humiliating to the responsible State).

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought.

COUNTERMEASURES

Objects and limits of countermeasures
(injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations; countermeasures are limited to the non-performance for the time being of international obligations of the State taking the measures towards the responsible State; shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question).

Countermeasures shall be terminated as soon as the responsible State has complied with its obligations under part two in relation to the internationally wrongful act – art. 53

Countermeasures shall not affect:
(a) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;
(b) obligations for the protection of fundamental human rights;
(c) obligations of a humanitarian character prohibiting reprisals;
(d) other obligations under peremptory norms of general international law.

State taking countermeasures is not relieved from fulfilling its obligations:
(a) under any dispute settlement procedure applicable between it and the responsible State;
(b) to respect the inviolability of diplomatic or consular agents, premises, archives and documents

Article 51
Proportionality

Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

Article 52
Conditions relating to resort to countermeasures

1. Before taking countermeasures, an injured State shall:
(a) call upon the responsible State, in accordance with article 43, to fulfil its obligations under part two;
(b) notify the responsible State of any decision to take countermeasures and offer to negotiate with that State.

2. Notwithstanding paragraph 1 (b), the injured State may take such urgent countermeasures as are necessary to preserve its rights.

3. Countermeasures may not be taken, and if already taken must be suspended without undue delay if:
(a) the internationally wrongful act has ceased; and
(b) the dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.

4. Paragraph 3 does not apply if the responsible State fails to implement the dispute settlement procedures in good faith.

PART FOUR GENERAL PROVISIONS

Article 55
Lex specialis

These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law.

Article 56
Questions of State responsibility not regulated by these articles

The applicable rules of international law continue to govern questions concerning the responsibility of a State for an internationally wrongful act to the extent that they are not regulated by these articles.

Article 57
Responsibility of an international organization

These articles are without prejudice to any question of the responsibility under international law of an international organization, or of any State for the conduct of an international organization.

Article 58
Individual responsibility

These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State.

Article 59
Charter of the United Nations

These articles are without prejudice to the Charter of the United Nations.